

IN THE SUPREME COURT OF MISSOURI

STATE OF MISSOURI,)	
)	
Appellant,)	
)	
v.)	No. SC94936
)	
RAYMOND ROBINSON,)	
)	
Respondent.)	

**BRIEF OF THE CITY OF ST. LOUIS, THE ARCHDIOCESE OF ST. LOUIS,
THE ST. LOUIS REGIONAL CHAMBER, THE DEMETRIOS JOHNSON
CHARITABLE FOUNDATION, AND SSM HEALTH AS *AMICI CURIAE* IN
SUPPORT OF APPELLANT STATE OF MISSOURI**

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STATEMENT OF INTEREST OF AMICI CURIAE

The City of St. Louis (the “City”) and the institutions that join the City as *amici* are interested in this case because the Court’s decision could dramatically impact the safety of those who live, work, visit, worship, and raise their families in the City. The City and its law enforcement professionals already have too few tools to combat gun violence, but this case puts one of those key tools—keeping guns out of the hands of convicted felons—at risk. By affirming the trial court’s decision, this Court would take that key tool away from law enforcement, thereby curtailing the City’s ability to reduce crime.

The Court’s decision here also threatens to undermine the stability of family life in the City. This Court must, of course, balance many considerations, but paramount among them is the security of the families who call our State home. Many of those families live in neighborhoods flooded with guns and riddled by bullets. For example, a recent study found that between 2009 and 2013, 398 children were treated in just two of the City’s hospitals for firearm-related injuries.

The City’s diverse community—leaders in government, religion, business, social services, and health care who join this brief are but representatives of so many others who are impacted by gun violence—is united in its commitment to reducing gun violence. In addition to the City itself, *amici* include the following institutions:

The Archdiocese of St. Louis (“Archdiocese”) is a community of Roman Catholics under the leadership of Archbishop Robert J. Carlson. The Archdiocese provides a wide range of spiritual, educational, and social services to people throughout the St. Louis

region, Catholic and non-Catholic alike. In addition to offering pastoral care and spiritual guidance to over 42,000 Catholics in the City, the Archdiocese supports, in numerous ways, twenty Catholic schools with more than 6,000 students and a diverse array of charitable programs within the City. The charitable programs aid those most often overlooked, including those with disabilities, those affected by crimes against persons including women seeking shelter from abusive partners and spouses (abusive partners and spouses who are often armed with guns), those re-entering society after imprisonment, and those poor and marginalized with nowhere else to turn. The Archdiocese believes that the common good of the citizens of the City will be furthered by prohibiting felons from possessing firearms as contemplated by the statute at issue here.

The St. Louis Regional Chamber (the “Regional Chamber”) is a broad community of leaders united for economic prosperity throughout the entire bi-state St. Louis region. Based in the City, the Regional Chamber serves the fifteen-county bi-state metropolitan region as the leading private-sector economic development organization. Its members employ roughly one-third of the region’s workforce, with member businesses that are businesses of every size from start-ups to large, publicly-traded companies, as well as non-profit organizations, educational institutions, and public-sector partners. In the Regional Chamber’s experience, employers who are considering starting, relocating, or expanding to St. Louis evaluate crime statistics to determine their level of corporate risk as well as whether they can attract and retain skilled and talented individuals in the community. Laws ensuring that workers, residents, and visitors feel safe and secure

throughout the St. Louis region are vital to making the region attractive for private-sector investment.

The Demetrious Johnson Charitable Foundation was founded in 1992, inspired to enhance the lives of inner city youth. Its mission is to help improve the lives of inner city youth by providing mentoring, financial, vocational, tutorial, and scholastic assistance programs.

SSM Health (“SSM”) is a Catholic not-for-profit health system serving the varied health needs of communities across the Midwest. SSM owns and operates ten hospitals in Missouri, including seven in the St. Louis metro area, and one each in the Missouri cities of Mexico, Maryville, and Jefferson City. SSM is dedicated to providing exceptional health care services and cares deeply about the health of the communities it serves. SSM believes that sensible gun regulations, including the prohibition of felons from possessing firearms at issue here, are essential to promote the health and well-being of all communities, including those served by SSM. One of SSM’s hospitals in the St. Louis area is SSM Cardinal Glennon Children’s Medical Center, which is located in the City and cares for children from throughout the region. The studies summarized in this brief include one that surveyed the number of gun-related injuries to children treated at the St. Louis region’s two Level-1 pediatric trauma centers, one of which is SSM Cardinal Glennon Children’s Medical Center.

In this brief, *Amici* illustrate how the overabundance of guns and gun crime impacts our City. *Amici* argue that upholding the felon-in-possession law as constitutional (1) is consistent with the intent of voters’ revision of Missouri’s

constitutional provision regarding gun rights, (2) serves a compelling interest of the City and State in protecting its citizens from gun violence, and (3) is appropriately tailored to regulate firearms possession by those most likely to commit future violent or gun-related crimes. *Amici* respectfully request that this Court find that the prohibition on felons from possession of weapons is constitutional, and reverse the trial court's dismissal of the information.

CONSENT OF PARTIES

Pursuant to Rule 84.05(f)(4), consent to the filing of suggestions or a brief of an *amicus curiae* need not be obtained when the brief is presented by a state entity authorized by law to appear on its own behalf. Here, the City of St. Louis is a constitutional charter city organized pursuant to the Missouri Constitution, the laws of the State of Missouri, and the charter of the City of St. Louis.

Furthermore, pursuant to Rule 84.05(f)(2), consent has been granted by all parties in this case for the filing of this brief by all of the undersigned *amici*.

JURISDICTIONAL STATEMENT

Amici hereby adopt and incorporate by reference the Jurisdictional Statement in Appellant State of Missouri's brief.

STATEMENT OF FACTS

Amici hereby adopt and incorporate by reference the Statement of Facts in Appellant State of Missouri's brief.

POINTS RELIED ON

Amici hereby adopt and incorporate by reference the Points Relied On in Appellant State of Missouri's brief.

ARGUMENT

Holding the felon-in-possession statute to be constitutional as applied to a felon with a prior conviction for unlawful use of a weapon honors the intent of Missouri voters by allowing law enforcement to keep guns out of the hands of people who have already shown a propensity for serious criminal conduct and who pose the greatest risk of committing future gun-related crimes.

In August 2014, the Missouri Constitution was amended to provide that the right to keep and bear arms shall be "unalienable" and that any restriction on these rights shall be subject to "strict scrutiny." The revised article I, section 23 ("section 23") has yet to be interpreted fully by the Missouri Supreme Court and the scope of its reach may be determined, in part, by this case.

In February 2015, the Honorable Robert Dierker of the Circuit Court for the Twenty-Second Circuit held that section 23 granted Raymond Robinson, a felon with a previous felony conviction for Unlawful Use of a Weapon, a constitutional right to carry a gun. Judge Dierker ruled that the Missouri law prohibiting felons from possessing guns is unconstitutional as applied to people with a prior felony conviction where the prior felony was a "non-violent" felony. The State appealed.

As this Court explained in Dotson II, the recent amendment to section 23 was not intended to undermine the long-standing prohibitions on convicted felons carrying guns.

Rather, the new amendment was intended to keep Missouri’s gun rights coextensive with rights under the United States Constitution, and, it must be acknowledged, the Second Amendment also allows government to prohibit felons from carrying guns. See infra Part II.A.1. The City and State have compelling interests in preventing violent crime and reducing ease of access to firearms by those most likely to commit violent crime. See infra Part II.A.2. Studies and articles suggest that convicted felons fall into this “most likely” category, whether the underlying felony is said to be violent or non-violent. See infra Parts I.B.1, II.A.2. Moreover, both violent and acquisitive crime have decreased in Missouri since the enactment of the challenged felon-in-possession law. See infra Part I.B.2.

The felon-in-possession law survives strict scrutiny. Even if the Court applies the traditional strict scrutiny analysis, an analysis which may not be the proper methodological tool here, the statute at issue would survive strict scrutiny because the State has a compelling interest in public safety and the statute is narrowly tailored to prohibit only those individuals at the greatest risk of committing future acts of violent crime. See infra Part II.A.2.

- I. The felon-in-possession law is an essential tool for reducing gun violence.**
 - A. Gun violence has wide-ranging impacts throughout the community, resulting in needless deaths, fractured families, significant societal costs, and hindrance of economic development.**

The City already bears much of the burden of the State’s lax gun laws. Whereas much of our state is rural—with wide expanses of land between homes where law-

abiding hunters are the most common gun owners—the densely-populated urban environment presents different challenges that result in the City disproportionately experiencing the wide-reaching impacts of easy access to guns and the proliferation of gun violence. *Amici* agree with the State that the public interest in preventing future crime and protecting the public from gun violence justifies the restriction on felons possessing firearms under § 571.070.1(1), RSMo.

1. The ubiquity of guns creates a public safety hazard.

Despite the best efforts of law enforcement, guns are too prevalent in the City of St. Louis. In the past five-and-a-half years, the Saint Louis Metropolitan Police Department (“SLMPD”) has taken more than 8,424 illegally owned firearms off the streets. St. Louis Metro. Police Dep’t, Data on Firearms, Homicide and Pediatric Firearms Injuries, (July 14, 2015), <http://www.slmpd.org/images/homicidefirearms20150714.pdf>. In 2015, the SLMPD has already seized more than 900 firearms. *Id.* As one City resident recently told the *New York Times*, “It’s nothing to get a firearm . . . I don’t know anybody who doesn’t carry or have easy access to one.” Erik Eckholm, St. Louis Puzzles Over Stubbornly High Murder Rate, N.Y. Times, Feb. 11, 2015, available at http://www.nytimes.com/2015/02/11/us/st-louis-puzzles-over-stubbornly-high-murder-rate.html?_r=0.

The real-life impact of guns’ ubiquity is unambiguous. Since the beginning of 2015 through July 8, there have been 89 murders involving a firearm in the City of St. Louis. St. Louis Metro. Police Dep’t, Data on Firearms, Homicide and Pediatric

Firearms Injuries, (July 14, 2015),

<http://www.slmpd.org/images/homicidefirearms20150714.pdf>. Through the end of May, there have already been 876 aggravated assaults involving a firearm in the City. St. Louis Metro. Police Dep't, Report: CRM0013-BY, Part 1 Crime Comparison Based on UCR Reporting, Neighborhood Report, Years Compared: 2014 - 2015, Months Included: January - May, available at http://www.slmpd.org/crimestats/CRM0013-BY_201505.pdf. In 2014, the City saw a total of 1,844 aggravated assaults involving a firearm. St. Louis Metro. Police Dep't, Part 1 Crime Comparison Based on UCR Reporting, Neighborhood Report, Years Compared: 2013 – 2014, Months Included: January – December, available at http://www.slmpd.org/crimestats/CRM0013-BY_201412.pdf.

2. Gun violence imposes significant costs on families, taxpayers, healthcare institutions, and businesses.

The human cost to society of gun violence is nearly impossible to quantify, but gun violence also exacts hard, out-of-pocket costs throughout the community. The Centers for Disease Control and Prevention estimates that, in Missouri alone, the medical and work-loss costs for the 846 deaths caused by gun-related injuries were more than \$1.1 billion. Ctrs. for Disease Control and Prevention, Nat'l Ctr. for Injury Prevention and Control, Web-based Injury Statistics Query and Reporting Sys., <http://www.cdc.gov/injury/wisqars/fatal.html>, data retrieved June 22, 2015. And, although gunshot injuries are concentrated disproportionately in particular neighborhoods, the overall costs of gun violence are “far more evenly distributed across

the population.” Jens Ludwig & Philip J. Cook, The Benefits of Reducing Gun Violence: Evidence from Contingent-Valuation Survey Data, 22 *The Journal of Risk and Uncertainty*, 207, 209 (2001), available at <http://home.uchicago.edu/ludwigj/papers/RU-CookLudwig-RedGunContinEval.pdf>. In fact, some economists calculate that households at relatively low personal risk of injury have the greatest financial stake in reducing gun violence because those households engage in more costly averting behaviors (including decisions about whether to live in the city, and whether to work in the evening), thereby incurring additional non-financial costs as a result of gun violence. *Id.*

The cost of gun violence equates to roughly \$700 per American per year. Mark Follman, Julia Lurie, Jaeah Lee & James West, What Does Gun Violence Really Cost?, *Mother Jones*, May 2015, available at <http://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america>. Put in context, our country spends more on gun violence than it does on obesity, ten times more on gun violence than it does on foreign aid, and almost as much on gun violence as it does on Medicaid. *Id.*

3. Gun violence undermines the stability of families.

Gun violence also undermines the security, sanctity, and stability of family life. All parents know that their children face risks in life, but too many parents have to worry whether their kids will survive to adulthood because the easy access to guns often results in simple juvenile disputes escalating into gun battles.

Gunshot victims are often children and teenagers. While some of these injuries are the result of accidental shootings, the majority result from intentional assaults. Email

from Elizabeth Holland Durando, Dir. of Med. News/Record Med. Ed., Wash. Univ. Sch. of Med., to Erin K. McGowan, Assistant City Counselor, City of St. Louis (June 25, 2015 16:19 CDT) (on file with undersigned). Overall, firearms-related injuries result in about 80 Level 1 trauma pediatric emergency department visits per year in St. Louis. Id.

A recent study tracked the number of pediatric firearm victims, aged sixteen or younger, treated at either of the St. Louis region's two Level-1 pediatric trauma centers – St. Louis Children's Hospital and Cardinal Glennon Children's Medical Center. Id. The five-year retrospective review found that 398 children were treated over a five-year period (2009-2013) for firearm-related injuries in these two hospitals. Id. The majority of these injuries (65%) were categorized as intentional assaults. Id. Although most patients (67.6%) were between fourteen to sixteen years of age, younger victims had a greater morbidity and mortality. Id. The average age of children injured by firearms is twelve years old. Id.

Gun violence not only physically injures children and their families; merely being exposed to gun violence can emotionally scar children for life. Youth exposed to gun violence are significantly more angry, and experience more disassociation, posttraumatic stress, total trauma, withdrawal, and desensitization to violence. Karen Slovak & Mark Singer, Gun Violence Exposure and Trauma Among Rural Youth, 16 Violence & Victims, 389-400 (2001); James Garbarino, Catherine P. Bradshaw & Joseph A. Vorras, Mitigating the Effects of Gun Violence on Children and Youth, 12 The Future of Children 73, 73, available at http://www.princeton.edu/futureofchildren/publications/docs/12_02_05.pdf. Children and youth exposed to gun violence find it harder to

concentrate in the classroom, struggle with academic performance, and have lower educational and career aspirations. Id. They are more prone to be delinquent, engage in risky behavior, and abuse drugs. Id.

Gun violence takes a disproportionate toll on African-American families. St. Louisans in every neighborhood experience the far-reaching effects of gun violence in one way or another, but African-American families face increased risks of gun violence. African-American men from fifteen through thirty-four years of age have the highest rates of experiencing the impact of firearm-related homicide. M. Denise Dowd, MD, MPH & Robert D. Sege, MD, PhD, Firearm-Related Injuries Affecting the Pediatric Population, 130 Pediatrics e1416, e1418 (2012), <http://pediatrics.aappublications.org/content/130/5/e1416.full.pdf+html>.

4. Gun violence hinders economic development.

In addition to the dramatic human cost, gun violence impairs the economic vitality of the City and undermines the City's ability to compete for businesses to locate, grow, and stay in the City. Decisions like whether to live in an urban environment and whether to work in the evening are greatly impacted by the risk of gun-related violence, particularly gun-related homicide. Ludwig, at 209; Julie Berry Cullen & Steven D. Levitt, Crime, Urban Flight, and the Consequences for Cities, 81 Review of Econ. and Statistics 159, 165-67 (1999), available at <http://pricetheory.uchicago.edu/levitt/Papers/CullenLevittCrimeUrban1999.pdf>; Daniel S. Hermermesh, Crime and the Timing of Work, Nat'l Bureau of Econ. Research Working Paper 6613, available at <http://www.nber.org/papers/w6613.pdf>.

The prevalence of gun violence also contributes to perceptions that deter businesses from opening in our City. We know that a low crime rate is considered a top quality-of-life concern of executives surveyed about business location and expansion plans. 29th Annual Survey of Corporate Execs.: Hesitancy Amid a Rosier Econ. Outlook, 1 Area Development Online (2015). Business executives rank crime ahead of quality public schools or healthcare facilities as a top concern. Id. We also know that, as a result of the fragmented governmental structures in the St. Louis region, the national media struggles to accurately compare crime rates in the St. Louis region with other metropolitan areas. But the crime rankings that sometimes appear in national media—faulty though they are—contribute to a perception of the St. Louis region that impacts decisions business leaders make about where to locate their business. See Richard Rosenfeld & Janet L. Lauritsen, The Most Dangerous Crime Rankings, 7 Contexts 66, 67 (2008) (reviewing City Crime Rankings (2007)). “Businesses think twice about relocating” to places that appear on crime rankings in the national media, and “organizations fail to sign or cancel convention contracts, families reconsider visiting or moving, and suburban and rural residents needlessly fear the city.” Id. at 66-67.

The proliferation of gun violence has also required businesses to develop policies designed to prevent guns from threatening the safety of their employees and customers. Donna Mahony, Risk Managers Offer Workplace Gun Violence Mitigation Tips, Bus. Ins., June 30, 2015, available at <http://www.businessinsurance.com/article/20150630/NEWS06/150639986>. Some employers have even started to incorporate active shooter emergency training into the regular training employees

receive. *Id.* These policies and new training regimes are necessary because lax gun laws expose businesses to significant financial risks. See Memorandum from Mayer Brown LLP to Nat'l Gun Victims Action Council, Concealed-Carry Laws for Illinois Property Owners, April 19, 2015, available at <http://www.multivu.com/players/English/65360-ngvac-national-gun-victims-tell-and-compel-we-re-done-asking/document/65360-NGVAC-Memo.pdf>.

B. The felon-in-possession law is an important crime-fighting tool.

1. Felons, whether convicted of a violent or non-violent felony, have a higher propensity to commit violent crime.

Common sense would seem to compel the conclusion that our communities are safer when weapons are kept out of the hands of convicted felons. And, generally speaking, violence is far more common among those involved in any form of illegal activity than those who are not. Richard Rosenfeld, Crime is the Problem, Homicide, Acquisitive Crime, and Economic Conditions, J. Quant. Criminol., May 18, 2009, at 4-6. But, lest we rely only common sense and generalities, well-accepted studies in the social science, public health, and medical fields demonstrate why guns simply do not belong in the hands of felons: felons, regardless of the nature of their prior felony, are more likely to commit future violent crimes than non-felons.

Non-violent criminal history predicts violent recidivism almost as strongly as does a violent criminal history. James Bonta, Karl Hanson & Moira Law, The Prediction of Criminal and Violent Recidivism Among Mentally Disordered Offenders: A Meta-

Analysis, 123 Psychol. Bull., 128-29 (1998). Moreover, a history of violent behavior better predicts the likelihood of violent recidivism than a history of violent crime. Id.

The Bureau of Justice Statistics has also indicated that criminals with prior offenses are more likely to be carrying guns during their subsequent offenses. The Bureau reports that drug offenders who were recidivists were more likely to be carrying a firearm during their offense than first-time drug offenders (9% versus 6% of State inmates and 11% versus 5% of Federal inmates). Caroline Wolf Harlow, Firearm Use by Offenders, Bureau of Just. Stat. Special Rep. 1, 6 (U.S. Dep't of Just.) Nov. 2001, available at <http://bjs.gov/content/pub/pdf/fuo.pdf>.

A New York Times analysis found that, in the State of Washington between 1995 and 2011, more than 400 people convicted of domestic violence misdemeanors regained their gun rights and went on to commit new crimes. Michael Luo, Felons Finding It Easy to Regain Gun Rights, N.Y. Times, Nov. 13, 2011, available at http://www.nytimes.com/2011/11/14/us/felons-finding-it-easy-to-regain-gun-rights.html?_r=0. More than 200 of them committed felonies, including murder, assault, child rape, and drive-by shooting. Id.

Research in the medical field also buttresses the idea that violent and non-violent felons should not have access to guns. A study published in the Journal of the American Medical Association concluded that even “[h]andgun purchasers with prior misdemeanor convictions are at an increased risk for future criminal activity, including violent and firearm-related crimes.” Garen Wintemute, et al., Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized

Purchasers of Handguns, 280 JAMA 2083 (1998), available at <http://jama.jamanetwork.com/article.aspx?articleid=188297>. That study further found that “even handgun purchasers with only 1 prior misdemeanor conviction and no convictions for offenses involving firearms or violence were nearly 5 times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.” Id.

Public health studies also demonstrate that denying guns to people with a prior felony conviction may lower their propensity to commit crimes in the future. Mona A. Wright, Garen J. Wintemute & Frederick P. Rivara, Effectiveness of Denial of Handgun Purchase to Persons Believed to Be at High Risk for Firearm Violence, 89 Am. J. of Pub. Health 88, 89 (1999). When felons commit a future crime, the new crimes are more likely to involve guns or violence. Id. But “denial of handgun purchase is associated with a reduction in risk for later criminal activity of approximately 20 to 30 percent.” Id.

Thus, the research is clear: individuals who have previously shown a propensity for criminal activity are more likely to commit violent crime than those individuals with no criminal history. Individuals with criminal pasts also are more likely to have criminal associations and find themselves in situations that require violent “self-help.” And non-violent felons are almost as likely to commit violent crimes as violent felons. It should go without saying that no felon should be allowed to carry a gun.

2. Section 571.070.1(1), RSMo., has contributed to a decrease in violent and acquisitive crime in the State of Missouri.

Since the felon-in-possession law was enacted in 2008, Missouri has seen a significant decrease in both violent and acquisitive crime. Estimated Violent and Property Crime in Missouri From 2000-2012, F.B.I.: Unif. Crime Reporting Statistics, <http://www.ucrdatatool.gov/Search/Crime/State/RunCrimeStatebyState.cfm>. In 2007, there were 32,962 reported instances of violent crime in Missouri, and, by 2012 (the last year for which data is available), instances of reported violent crime decreased to 27,155. Id. Similarly, incidences of reported acquisitive crime dropped following the enactment of § 571.070.1(1): in 2008, Missouri experienced 216,522 reported cases of acquisitive crime, down from 225,113 in 2007; by 2012, that number dropped to 199,590. Id.

Although different variables affect decreases in crime, economic downturns tend to increase criminal activity. Despite this trend, Missouri emerged from the 2008 recession with decreasing rates of both violent and acquisitive crime. Although it is obviously not the sole cause of the decline in crime, there is a notable correlation between that decline and the enactment of § 571.070.1(1).

II. The trial court’s decision takes away one of law enforcement’s few tools to reduce gun violence. This Court should reverse, and hold that the felon-in-possession law is constitutional.

“Every constitution adopted by the citizens of the State of Missouri since its inception in 1820 has contained [gun rights] language . . .”, but “such constitutional provisions have **never** been held to deprive the General Assembly of authority to enact

laws which regulate the time, place and manner of bearing firearms.” City of Cape Girardeau v. Joyce, 884 S.W.2d 33, 34 (Mo. App. 1994) (emphasis added). Indeed, since at least 1881 the Missouri Supreme Court has consistently upheld gun regulations as constitutional measures that promote public safety and health. See State v. Wilforth, 74 Mo. 528, 530-31 (Mo. 1881) (“a law which is merely intended to promote personal security, and to this end prohibits the wearing of certain weapons in such a manner as is calculated to exert an unhappy influence upon the moral feelings of the wearer, by making him less regardful of the personal security of others, does not come in collision with the constitution”) (internal quotations omitted); City of St. Louis v. Vert, 84 Mo. 204 (Mo. 1884); State v. Shelby, 90 Mo. 302 (Mo. 1886); State v. Keet, 269 Mo. 206 (Mo. 1916); State v. White, 299 Mo. 599 (Mo. 1923); State v. Richard, 298 S.W.3d 529 (Mo. banc 2009).

The felon-in-possession statute at issue here criminalizes the possession of a firearm by any person who “has been convicted of a felony under the laws of this state.” § 571.070.1(1), RSMo. The defendant in this case, a felon who was previously convicted for unlawful use of a weapon, was arrested for possession of an automatic pistol, and was charged as a felon-in-possession of a gun under § 571.070.1(1). The defendant’s parole record was, according to the trial judge, “not stellar,” he had a prior arrest record including assault and resisting arrest, and he admitted to beating an individual for stealing his tools. Notwithstanding the defendant’s dangerous record, the trial judge dismissed the felon-in-possession charges on the grounds that the new constitutional amendment rendered the felon-in-possession law unconstitutional as applied to the defendant. The

trial judge here erred in construing the Missouri Constitution in a manner that undermined the intent of the voters in adopting the new amendment, and in holding § 571.070.1(1) unconstitutional. This Court should reverse the trial court's dismissal.

A. Section 571.070.1(1) is constitutional as applied to Defendant.

Robinson failed to meet his burden of proving that section 571.070.1(1) is unconstitutional.¹ “When considering the legal issue of the constitutional validity of a statute, this question of law is to be reviewed *de novo*.” City of Arnold v. Tourkakis, 249 S.W.3d 202, 204 (Mo. banc 2008). “A statute is presumed to be constitutional and will not be invalidated unless it ‘clearly and undoubtedly’ violates some constitutional provision and ‘palpably affronts fundamental law embodied in the constitution.’” Bd. of Educ. of City of St. Louis v. State, 47 S.W.3d 366, 368-69 (Mo. banc 2001) (internal

¹ Judge Dierker considered four issues in the Order granting Robinson's motion to dismiss: (1) whether defendant had standing to attack the constitutionality of the statute; (2) whether the revised article I, section 23 applied to the prosecution which began before adoption of the revision; (3) whether the revision renders section 571.070.1(1) unconstitutional on its face; and (4) whether section 571.070.1(1) is unconstitutional as applied to Robinson under the circumstances of this case. State v. Robinson, No. 1422-CR02936-01, slip op. at 3 (Mo. Cir. Feb. 27, 2015). This brief only addresses the final issue – the “as applied” challenge to section 571.070.1(1) – since the constitutionality of that statute is the “sole issue on appeal.” Statement of Jurisdiction and Suggestions in Support ¶ 4, State v. Robinson (No. SC 94936).

citations omitted). The party challenging the validity of the statute has the burden of proving the statute unconstitutional. State v. Salter, 250 S.W.3d 705, 709 (Mo. banc 2008).

1. The 2014 Amendment to article I, section 23 was not intended to undermine the legislature’s ability to regulate possession of firearms by convicted felons.

In 2014, Missouri voters approved Senate Committee Substitute for Senate Joint Resolution 36 (“SJR 36”), which amended article I, section 23 of the Missouri Constitution to declare that the “right of every citizen to keep and bear arms in defense of his home, person, family and property” is “unalienable” and any restrictions on that right “shall be subject to strict scrutiny.” Mo. Const. art. I, § 23. The amendment further stated that “[n]othing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons” Id.

Applying this amendment requires the Court “to give effect to the intent of the voters who adopted the Amendment.” Keller v. Marion Cnty. Ambulance Dist., 820 S.W.2d 301, 302 (Mo. banc 1991) (citing Boone Cnty. Ct. v. State, 631 S.W.2d 321, 324 (Mo. banc 1982)). The language of the amendment itself, the ballot language voters approved, and the legislative intent underlying the amendment all support the common sense conclusion that the amendment was not intended to undermine the legislature’s authority to prohibit felons from carrying guns, an authority well-grounded in generations of decisions in Missouri and federal courts.

In Dotson v. Kander, No. SC 94482, 2015 WL 4036160 (Mo. banc June 30, 2015) (“Dotson II”), this Court interpreted the amendment’s scope as coextensive with the rights guaranteed by the Second Amendment to the United States Constitution. Id. at *5. Indeed, the “the central purpose of the amendment to article I, section 23, is not to change the right to bear arms, but to make certain ‘declarations’ about that right.” Id. at *7.

The Court’s analysis in Dotson II was consistent with the intent of the legislators who proposed the amendment and the voters who adopted it at the polls. As the sponsor of SJR 36 explained, “The clear purposes of SJR 36 are to bring the Missouri constitution in line with Heller and McDonald, to ensure that the Missouri right to keep and bear arms remains coextensive with the federal right explicated in Heller and McDonald, and to provide a prophylactic against legislative or judicial action that would violate McDonald.” Id. at *9 (quoting Br. of Intervenors Kurt Schaefer and Missourians Protecting the 2nd Amendment, Dotson v. Kander, 2015 WL 4036160 (Mo. banc June 30, 2015), No. SC 94482, at *14 (footnote omitted)); see also Br. of Amicus Curiae Senator Schaefer, State v. Merritt, No. SC 94096, at *3 (“Section 23 was never intended to upend important public safety statutes like the felon in possession statute at issue here, Sec. 571.070.1, RSMo. Like Heller noted with the Second Amendment, nothing in amended Section 23 ‘should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons . . .’”).

In this case, the trial court held that “[b]y including the express exception for violent felons, the people implicitly demanded something more to justify a prohibition applicable to all felons.” Robinson, slip op. at *13. But this Court already corrected the

trial court in its Dotson II opinion. In Dotson II, the Court quoted District of Columbia v. Heller, 554 U.S. 570 (2008), to explain that “[t]he right to bear arms ‘is not unlimited’ and there are still ‘longstanding prohibitions on the possession of firearms by felons and the mentally ill’” Dotson II, 2015 WL 4036160, at *5 (quoting Heller, 554 U.S. at 626). This Court further held that “[t]he fact that violent felons are named does not necessarily increase the rights of nonviolent felons, a restriction clearly noted in Heller.” Id. at *5 n.6.²

The trial court’s conclusion below would render Missouri law far more protective of gun rights for felons than federal law. Indeed, the federal cases that motivated the new constitutional amendment unequivocally allow the prohibition of felons carrying guns. There is nothing ambiguous about the United States Supreme Court’s explanation in Heller that there should be no doubt that “longstanding prohibitions on the possession of

² See also Dotson II, 2015 WL 4036160, at *9 (Fischer, J., concurring) (“There is no indication that the proponents of SJR 36 intended the Missouri Constitution to be more expansive than the current declaration of the Second Amendment, nor is there any indication that it was intended to curtail the recognized limits on the possession of firearms by felons and the mentally ill The fact that violent felons are named does not increase the rights of nonviolent felons”); Dotson II, 2015 WL 4036160, at *13 (Stith, J., concurring) (writing that the amendment’s “failure . . . to mention the right to regulate nonviolent felons” does not mean “that the amendment removed from the legislature its traditional authority to regulate the possession of weapons by all felons”).

firearms by felons” are valid under the Second Amendment. Id. The Supreme Court later reaffirmed its appreciation that prohibiting felons from carrying guns is constitutional, declaring in McDonald v. City of Chicago, that Heller “did not cast doubt” on prohibitions on the possession of firearms by felons, and unequivocally stating that “We [the Supreme Court] repeat those assurances here.” 561 U.S. 742, 786 (2010). Thus McDonald and Heller—the cases with which the new amendment was intended to align—allow for laws prohibiting felons carrying guns. It would be irrational to conclude that a constitutional amendment that was designed to render Missouri law coextensive with the Second Amendment instead rendered unconstitutional prohibitions that the United States Supreme Court has repeatedly endorsed.

As noted above, “the central purpose of the amendment to article I, section 23, is not to change the right to bear arms, but to make certain ‘declarations’ about that right.” Dotson II, 2015 WL 4036160, at *7. Because the amendment was not intended to change the right to bear arms, it should not be interpreted as radically gutting the long-standing Missouri law that has affirmed the Legislature’s right to regulate possession of firearms by felons and through other gun regulations. See, e.g., State v. Harris, 414 S.W.3d 447, 450-51 (Mo. 2013) (holding that in criminalizing possession of firearms based on a prior-committed felony, section 571.070 is not an unconstitutional ex post facto law); Richard, 298 S.W.3d 529 (upholding a statute criminalizing possession of a loaded firearm by an intoxicated individual as a “reasonable exercise of the legislative prerogative to preserve public safety”); Heidbrink v. Swope, 170 S.W.3d 13, 15 (Mo. App. 2005) (noting, in upholding a gun-permit statute, that it is within the scope of the

State’s police power “to prohibit certain persons who by their previous conduct have demonstrated their unfitness to acquire a concealable firearm”); Joyce, 884 S.W.2d at 34 (upholding a city ordinance prohibiting open carry).

2. Section 571.070.1(1) survives strict scrutiny.

Section 23 provides that “Any restriction on these rights shall be subject to strict scrutiny.” Mo. Const. art. I, § 23. Although Dotson II acknowledged the traditional strict scrutiny analysis, requiring “the law at issue [to be] ‘narrowly tailored to achieve a compelling interest,’” the Court acknowledged that there is no “settled analysis” of how to apply strict scrutiny to the right to bear arms, “which has historically been interpreted to have accepted limitations.” Id. at *4. The Court noted that, simply because strict scrutiny applies, it “‘says nothing about the ultimate validity of any particular law; that determination is the job of the court applying’ the standard.” Id. at *4 (quoting Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 230 (1995)).

As this Court noted, other state courts have upheld gun regulations under strict scrutiny, including “several laws regulating the possession of firearms, including a felon-in possession law, a conceal-carry law, and a minor-in-possession law.” Id. at *5 (citing State v. Eberhardt, 145 So. 3d 377, 385 (La. 2014); In re J.M., 144 So. 3d 853, 863, 866 (La. 2014); State v. Webb, 144 So. 3d 971, 979, 983 (La. 2014); State v. Draughter, 130 So. 3d 855, 868 (La. 2013)).

Such cases “demonstrate [that] the addition of strict scrutiny to the constitution does not mean that laws regulating the right to bear arms are presumptively invalid,” but instead that “[t]he right to bear arms ‘is not unlimited’ and there are still ‘longstanding

prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’” Id. (quoting Heller, 554 U.S. at 626-27). Indeed, the Court noted that “[t]he fact that violent felons are named does not necessarily increase the rights of nonviolent felons, a restriction clearly noted in Heller, 554 U.S. at 626-27.” Id. at *5 n.6.

Thus the “strict scrutiny” analysis applicable to gun cases, as acknowledged in Dotson II, Heller, and similar cases, is less “strict” than in some other contexts (e.g., free speech), and must be applied in a manner that respects the long-established authority of the Legislatures to regulate and limit the possession and use of guns.

But no matter how “strict” the “strict scrutiny” analysis is, § 571.070.1(1) survives strict scrutiny. That § 571.070.1(1) serves a “compelling interest” was not disputed below. Transcript of Oral Argument at 6:6-22, State v. Robinson, No. 1422-CR02936-01 (Jan. 14, 2015) (“[Mr. Kutz:] In order, you know, to meet the standard, it first has to serve a compelling government interest, which the state alleges. And I don’t disagree that public safety and public order has been defined as an important government interest.”).

The trial court similarly held, “The State’s reliance on prevention of crime and protection of public safety as compelling interests justifying § 571.070.1(1) is undeniably a weighty argument in favor of applying that statute to defendant. Public safety is a legitimate governmental concern . . . and the government’s interest in preventing crime

has been recognized as compelling.” Robinson, slip op. at *11 (citing McCullen v. Coakley, 134 S. Ct. 2518, 2530 (2014); United States v. Salerno, 481 U.S. 739 (1987)).

Surely the compelling interest of reducing gun violence is indisputable. As this Court has previously held, the State has a compelling interest in public safety and protection of the public from crime. See, e.g., In re Care and Treatment of Norton, 123 S.W.3d 170, 174 (Mo. banc 2003) (finding compelling interest in protecting the public from crime by secure confinement of persons adjudicated to be sexually violent predators). As discussed more fully above, the City of St. Louis, specifically, and Missouri generally, are impacted by gun violence and have a compelling interest to protect the public from it.

Moreover, § 571.070.1(1) is “narrowly tailored” (even assuming *arguendo* that such is the applicable standard) as applied to the Defendant here. The trial court found that (i) studies cited by the State connecting prior criminal convictions and subsequent violent offense were unpersuasive as they failed to establish “more than a correlation” and failed to differentiate between violent and non-violent offenses, and (ii) the “blanket prohibition” applicable to all felons was incongruous with the intent of the voters in light of the inclusion of the “convicted violent felons” language in section 23. The latter point is readily answered since this Court has already rejected the trial court’s interpretation of the “convicted violent felons” provision. See Dotson II, 2015 WL 4036160, at *5 n.6 (“The fact that violent felons are named does not necessarily increase the rights of nonviolent felons . . .”).

Nor is § 571.070.1(1) a “blanket prohibition.” Any category can be further subdivided in one way or another, and the lines that the Legislature drew in § 571.070.1(1) were not arbitrary or overbroad. By its language, the statute only applies to persons “convicted of a felony.” § 571.070.1(1), RSMo. In particular, this definition carves out those persons previously convicted of misdemeanors, and those persons receiving a suspended imposition of sentence on a felony. The statute is thus narrowly tailored to those individuals deemed most at risk of committing gun violence.

Despite the trial judge’s discounting of the State’s evidence, well-accepted data demonstrates that prohibiting prior convicted felons from possession of firearms can lead to reduced gun crime. These studies resulted in the following findings:

- One study found that denial of handgun purchases to convicted felons led to lower rates of subsequent crimes involving guns or violence. Wright, at 89.
- A report by the Bureau of Justice Statistics also indicates that criminals with prior offenses are more likely to be carrying guns during their subsequent offenses. Harlow, at 6. In particular, the Bureau reported that, among prison inmates, drug offenders (*i.e.*, not just violent felons) who were recidivists were more likely to be carrying a firearm during their offense than first-time drug offenders. Id.
- Yet another study looking at explanatory risk factors for convicted homicide offenders and arrestees found that “weapon carrying” offenses were one of fifty-seven types of crimes that best predicted later homicide. Rolf Loeber & David Farrington, Young Homicide Victims and Offenders 157 (2011).

- A 1998 study concluded that even “[h]andgun purchasers with prior misdemeanor convictions are at an increased risk for future criminal activity, including violent and firearm-related crimes.” Wintemute, at 2083. That study further found that “even handgun purchasers with only 1 prior misdemeanor conviction and no convictions for offenses involving firearms or violence were nearly 5 times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.” Id.
- Another study concerning recidivism and mentally ill individuals similarly concluded that nonviolent criminal history predicts violent recidivism almost as strongly as does a violent criminal history. Bonta, at 128-29.

A statute prohibiting persons with both violent and non-violent felonies from possessing firearms is thus narrowly tailored to that group of persons most likely to commit future violent or gun-related offenses.

B. Section 571.070.1(1) is a constitutional exercise of the State’s police power.

“The function of police power is to preserve the health, welfare and safety of the people by regulating all threats harmful to the public interest.” Richard, 298 S.W.3d at 532 (citing Craig v. City of Macon, 543 S.W.2d 772, 774 (Mo. banc 1976)). As a result, “[t]he legislature is afforded wide discretion to exercise its police power” Id.

The right to keep and bear arms does not trump the State’s police power. Heidbrink, 170 S.W.3d at 16. The Supreme Court has held that the state has the inherent power to regulate the carrying of firearms as a proper exercise of the police power.

Richard, 298 S.W.3d at 532 (holding that the regulation of the possession of firearms by intoxicated individuals represents a reasonable exercise of police power). The function of police power is to preserve the health, welfare, and safety of the people by regulating all threats harmful to the public interest. Id. It is then the function of the courts to determine “whether a statute purporting to constitute an exercise of the police power has a real and substantial relationship to the protection of the public health, safety, morals or welfare and whether it unjustifiably invades rights secured by the Constitution.”

Heidbrink, 170 S.W.3d at 16 (quoting State ex rel. Kansas City, Mo., 524 S.W.2d 855, 862 (Mo. banc 1975)).

“Statutes enacted under the police power for the protection of the public health or safety, for the prevention of fraud and for the public welfare, must have some substantial relation to those objects.” Damon v. City of Kansas City, 419 S.W.3d 162, 184 (Mo. App. 2013) (quoting City of Kansas City v. Jordan, 174 S.W.3d 25, 41-42 (Mo. App. 2005)); see also Smith v. City of St. Louis, 409 S.W.3d 404, 425 (Mo. App. 2013) (municipal ordinances must have a rational relationship to the health, safety, peace, comfort, and general welfare of the inhabitants of the municipality). The police power is a power to be exercised within wide limits of legislative discretion and if a statute appears to be within the apparent scope of this power the courts will not inquire into its wisdom and policy, or undertake to substitute their discretion for that of the legislature. Id. at 184.

While the Court in Dotson II indicated that strict scrutiny applies to laws affecting the right to bear arms, it noted “there is no settled analysis as to how strict scrutiny

applies to laws affecting the fundamental right to bear arms, which has historically been interested to have accepted limitations.” Dotson II, 2015 WL 4036160, at *10 (citing Heller, 554 U.S. at 626-27); id. at *14 (Stith, J., concurring) (“[T]here is no reason to interpret the term ‘strict scrutiny’ in the recently adopted amendment to require utilization of a technical legal standard that even the United States Supreme Court does not apply to a regulation of the Second Amendment”).

Interpreting firearms regulations such as § 571.070.1(1) under the “substantial relationship” test used to determine the proper exercise of the police power would also be consistent with existing gun rights jurisprudence. Nearly all public safety statutes have been held to be constitutional pursuant to the Second Amendment. Br. of Amicus Curiae Senator Schaefer, State v. Merritt, No. SC 94096, at *6 (citing United States v. Joos, 638 F.3d 581, 586 (8th Cir. 2011); United States v. Carter, 75 F.3d 8, 13 (1st Cir. 2014); United States v. Carter, 750 F.3d 462, 467 (4th Cir. 2014); United States v. Izaguirre-De La Cruz, 510 F. App’x 233 (4th Cir. 2013); Nat’l Rifle Ass’n of Am., Inc. v. McCraw, 719 F.3d 338, 347 (5th Cir. 2013); GeorgiaCarry.Org, Inc. v. Georgia, 687 F.3d 1244, 1261-63 (11th Cir. 2012); United States v. Mudlock, 483 F. App’x 823, 828 (4th Cir. 2012). And, as discussed earlier, Missouri also has a long history of upholding regulation of gun ownership in order to protect the public safety. See, e.g., Joyce, 884 S.W.2d at 34.

Accordingly, the substantial relationship test should apply, and provides a clear and established framework for guidance in establishing how to apply “strict scrutiny” to gun laws (a question explicitly left unanswered in Dotson II).

CONCLUSION

All St. Louisans have a right to live in a community free of gun violence. Law enforcement in the City of St. Louis struggles every day to use the few tools Missouri law provides to reduce gun violence and to keep guns out of the hands of those most likely to commit violent acts in the future. Their job is tough. Almost always, they do their job extraordinarily well, but they are forced to combat violence in an environment with too many guns, too few strong laws, and sometimes not enough support from other branches of government.

This brief expresses the combined voice of St. Louisans as expressed through the leaders of our City government and our City's religious, business, social services, and health care communities. Those institutions represented as *amici* here do not agree on everything, but all *amici* agree that law enforcement must have the necessary tools to reduce gun crime in the City of St. Louis. *Amici* also know that the well-accepted statistical evidence demonstrates that guns simply do not belong in the hands of convicted felons—whether they were convicted of a violent or a non-violent felony.

The Court should reverse the trial court's order, and should hold that § 571.070.1(1) is constitutional and allow law enforcement to continue trying to keep guns out of the hands of felons. *Amici* strongly urge the Court to reverse the grant of Robinson's motion to dismiss and to remand this case to the trial court.

Dated: July 14, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 14, 2015, a true and correct copy of the foregoing document was served upon the Clerk of the Court and upon all counsel of record via the Missouri e-filing system.

/s/ Winston Calvert

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief includes the information required by Rule 55.03 and complies with the requirements contained in Rule 84.06. Relying on the word count of Microsoft Word, the undersigned certifies that this brief contains a total of 9,261 words, excluding the cover, certificate of service, certificate of compliance, and signature block.

/s/ Winston Calvert